

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD L. MOSHIER, JR.,)	
)	
Plaintiff,)	CIVIL ACTION NO. 05-180(ERIE)
)	
v.)	JUDGE MCLAUGHLIN
)	MAGISTRATE JUDGE BAXTER
UNITED STATES OF AMERICA,)	
)	Electronically Filed
Defendant.)	

DEFENDANT'S MOTION FOR LEAVE TO DEPOSE PLAINTIFF

Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, defendant the United States of America, by its undersigned counsel, hereby files the following Motion for Leave to Depose Plaintiff, and in support thereof states as follows:

1. *Pro se* prisoner Donald L. Moshier, Jr. filed this *pro se* lawsuit against the United States of America and five (5) individual defendants alleging that, while incarcerated at a federal prison in McKean County, Pennsylvania ("FCI McKean"), he received inadequate medical care from defendants in connection with his Hepatitis C, gallbladder problems and a growth on the side of his stomach. Specifically, plaintiff's Amended Complaint asserted a claim pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that defendants violated his Eighth Amendment right to be free from cruel and unusual punishment, and a negligence claim under the Federal Tort Claims Act, 28 U.S.C. § 2670 *et seq.* ("FTCA").

2. On September 21, 2007, defendants filed a partial motion to dismiss or, in the alternative, motion for summary judgment. The motion argued that plaintiff's *Bivens* claims should be dismissed in their entirety, and that his *Bivens* and FTCA claims should also be

dismissed insofar as they relate to his gallbladder problems and a growth on the side of his stomach.

3. On May 15, 2007, this Court issued a Report and Recommendation that recommended that defendants' partial motion for summary judgment be granted. The District Court adopted the Report and Recommendation by Order dated June 11, 2007. Accordingly, plaintiff's only remaining claim is an FTCA claim against the United States alleging medical negligence regarding the treatment of his Hepatitis C condition. (*See* Docket No. 40, at p. 20).

4. Plaintiff is presently confined at Federal Correctional Institution Schuylkill ("FCI Schuylkill") in Minersville, Pennsylvania. To discover the facts regarding plaintiff's remaining claim, the United States seeks leave pursuant to Fed. R. Civ. P. 30(a)(2) to take plaintiff's deposition.

5. The deposition is intended to be taken upon oral examination by telephone or other remote electronic means (live video conferencing) during the week of July 30, 2007.

6. Rule 30 provides that "[a] party must obtain leave of Court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison" None of the discovery limitations set forth in Rule 26(b)(2) apply to this case. Specifically, the discovery sought is not unreasonably cumulative or duplicative. Nor does the burden or the expense of the proposed discovery outweigh its likely benefit taking into account the needs of the case, the amount in controversy, the party's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. *See* Fed. R. Civ. P. 26(b)(2).

7. For these reasons, the United States respectfully requests that the Court grant leave to take the deposition of plaintiff by telephone or other remote electronic means.

WHEREFORE, defendant the United States of America respectfully requests that its Motion for Leave to Depose Plaintiff be granted.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney
Western District of PA
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7429
PA ID No. 76972

Counsel for defendant the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2007, a true and correct copy of the within Defendant's Motion for Leave to Depose Plaintiff was served via first-class U.S. mail upon the following:

Donald L. Moshier, Jr.
No. 10924-052
FCI Schuylkill
P.O. Box 759
Minersville, PA 17954

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney